

Attorney Docket No.: 2003-0056-01
USSN 10/609,223

Remarks

Claims 1-72 are active and pending in the present application. Claims 1-4, 9-16, 21-28, 33-40, 45-52, 57-64, and 69-72 stand rejected. Claims 5-8, 17-20, 29-32, 41-44, 53-56 and 65-68 are indicated as having allowable subject matter but are objected to for depending from a rejected base claim. Additionally, the Abstract is objected to for exceeding 150 words. In response, Applicants provide the following remarks requesting reconsideration and withdrawal of the rejections.

Claims 1, 13, 25, 37, 49 and 61 have been amended to remove obvious typographical errors and for no other reason and specifically not to define over any art. The amendments are not made with the intent to, nor do they, have the effect of narrowing the claims in any way.

Double Patenting

Claims 1-4, 9-16, 21-28, 33-40, 45-52, 57-64, and 69-72 stand rejected on the grounds of nonstatutory obviousness-type double patenting over claims 1-180 of U.S. Patent No. 6,952,267. In order to advance prosecution of this case in a timely and efficient manner, Applicants have provided with this Response an appropriate Terminal Disclaimer to overcome this rejection. However, Applicants do not intend for such actions to be construed as necessarily acquiescing to the accuracy or appropriateness of this rejection.

35 USC §103

Claims 1-4, 9-16, 21-28, 33-40, 45-52, 57-64, and 69-72 stand rejected under 35 USC §103(a) as being obvious over Das et al. (US Patent No. 6,317,448). The Examiner asserts that Das et al. disclose substantially the invention recited in the claims but admits that Das et al. do not expressly show the claimed equation. However, the Examiner contends that Das et al. show "that the relationship between the reported value has a linear relationship ... thus meeting the claimed equation."

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Applicants respectfully disagree with the Examiner's characterization of the teachings of Das et al. and submit that no prima facie case of obviousness has been established as needed to support a rejection under 35 USC §103. Claims 1, 13, 25, 37, 49, and 61 each contain a number of substantially similar limitations and, thus, only claim 1 is discussed herein with the intention that these comments are applicable to all the pending independent claims.

First, the sections of Das et al. referred to by the Examiner relate mostly to wavelength measurement based on pixel location of photo diodes upon which laser light impinges (see column 4, lines 33-42). Applicants urge that the equations described in Das et al., whether or not showing a linear relationship, do not disclose or suggest a "computing unit adapted to compute a reported parameter of unknown bandwidth" as recited in the claim. Das et al. themselves recognize that wavelength measurement is different than bandwidth calculation by treating these concepts in separate sections of their disclosure. Applicants urge that the equations of Das et al. (e.g., column 4, line 42) that show a linear relationship between physical pixel location and a wavelength measurement do not disclose or suggest the equation recited in the claim that expresses a linear relationship between two different bandwidth parameters.

Additionally, the equation of the claim expresses that the linear relationship exists between a measured parameter and a reported parameter with at least three specific limitations. First, both parameters are parameters of bandwidth (whether measured or calculated). Secondly, the claim expressly recites that the reported parameter and measured parameter are different types of parameters. Finally, these different types of parameters are used in calibration to calculate the values A and C used in the recited equation. The exact claim language recites:

"wherein the RP and MP are a different type of parameter and the values of A and C are determined based upon calibration of the optical bandwidth measuring unit MP response for light of a known value of RP."

These limitations are carefully explained in the original specification at page 7 which says, "[t]hose skilled in the art will understand that an important aspect of an embodiment of the present invention is that the bandwidth metrics utilized on the two sides of the slope and intercept equation need not be the same type. A better approximation of the

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actual bandwidth being measured is often capable using this technique where the metric for the reported parameter (the metric desired for reporting the bandwidth of the spectrum having the unknown bandwidth) is different from the measured parameter actually measured in the detector (i.e., as done by the processor based upon the output voltages from the photodiodes of, e.g., the PDA 30), e.g., RP in E95 and MP in FWHM or RP in FWHM and MP in FW75%M, provided that the calibration is also done in the respective MP value and the details of the shape of the possible unknown spectra are defined and reasonably systematically or physically constrained so that the proper selection of RP v. MP can be determined and utilized.”

While Das et al. do describe estimating the bandwidth of a light source, they do not teach or suggest the limitations identified above that are recited in the claims. For example, starting at column 9, line 44, Das et al. discuss estimating FWHM bandwidth but do so with a number of non-linear equations. In a different section, Das et al. also discuss estimating the 95% integral bandwidth of a light source starting at column 10, line 31. However, unlike the claim limitations, the three equations discussed by Das et al. include the same parameter of bandwidth on both sides of the equation which is in direct contrast to express claim limitations.

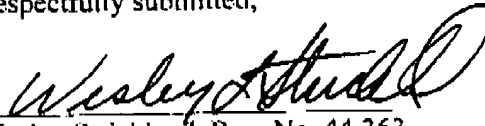
Accordingly, Applicants urge that Das et al. do not teach or suggest that a) coefficients of a calibration equation be determined based on different types of parameters of bandwidth, and b) that a reported parameter of an unknown bandwidth be measured according to a linear formula having two different types of parameters of bandwidth, as recited in the claims. Thus, Das et al. do not teach or suggest every limitation recited in claim 1 and, therefore, do not provide the support for a prima facie case of obviousness under 35 USC §103. The other independent claims include substantially similar limitations and, for at least the reasons just provided, are not unpatentable in view of Das et al. either. Reconsideration and withdrawal of the rejection under 35 USC §103 of claims 1-4, 9-16, 21-28, 33-40, 45-52, 57-64, and 69-72 are respectfully requested.

In view of the above amendments, Applicants believe all claims are in condition for allowance and passage of this case to issue is respectfully requested.

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Applicants authorize the Commissioner to charge \$580.00 to our Deposit Account No. 03-4060 which consists of the two-month extension of time fee of \$450.00 and \$130.00 for the terminal disclaimer fee. Applicants do not believe any other fees are due, however if any other fees are due, the Commissioner is authorized to charge the fees to Deposit Account No. 03-4060.

Respectfully submitted,


Wesley Strickland, Reg. No. 44,363

May 11, 2006
Cymer, Inc.
Customer No. 21773
Telephone: (858) 385-7185
Facsimile: (858) 385-6025